IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 28476 of 2007(M)

PETITIONER:

K.M.PRAKASAN, AGED 56 YEARS,
S/O. K.V.MANI,KULANGARAPARAMBIL HOUSE,
EDAKKUNNI VILLAGE, DESOM,
THAIKKATTUSSERY P.O. OLLUR,
THRISSUR.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS:

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1. THRISSUR CORPORATION
REPRESENTED BY ITS SECRETARY

2. ARANATTUKARA ORIENTAL CO-OPERATIVE
BANK LTD.NO. 171, P.O.ARANATTUKARA
THRISSUR REPRESENTED BY ITS SECRETARY

3. REEJA,S/O.SUBRAMANIAN,
KUNNATHPUTHENPARAMBIL HOUSE,
KADAVALLUR GOVT,QUARTERS
KUNNAMKULAM VIA, THRISSUR.

4. SUBRAMANIAN,
KUNNATHPUTHENPARAMBIL HOUSE,
KADAVALLUR GOVT,QUARTERS
KUNNAMKULAM VIA, THRISSUR.

BY ADV. SRI.SHOBY K.FRANCIS FOR R3 AND R4
SMT.A.SREEKALA
SMT.N.SUDHA DEVI
SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28476 of 2007(M)

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF RECEIPT DATED 2/5/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF LETTER DTD.10/03/2006 WITH REF.NO.31/06 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P3 TRUE COPY OF THE LETTER DATED 24/04/2006 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P4 TRUE COPY OF THE REPRESENTATION DATED 24/04/2006 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P5 TRUE COPY OF LETTER DATED 13/07/2006 WITH REF.NO.102/06 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

2ND RESPONDENT'S EXTS:

EXT.R2(a) TRUE COPY OF THE DECLARATION EXECUTED BY THE PETITIONER DATED 20/12/1999.

EXT.R2(b) TRUE COPY OF THE DECLARATION EXECUTED BY THE 4TH RESPONDENT DATED 21/12/1999

EXT.R2(c) TRUE COPY OF THE DECLARATION EXECUTED BY MR.T.S.CHANDRAN DATED 21/12/1999

EXT.R2(d) TRUE COPY OF THE LEDGER EXTRACT RELATING TO THE LOAN TRANSACTION OF THE 3RD RESPONDENT.

3RD RESPONDENT'S EXTS:

ANNEX.R3(A) TRUE COPY OF THE LETTER DATED 24/07/2000 ISSUED BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT.

ANNEX.R3(B) TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTER 95-96 DTD.6/10/1995 ISSUED BY THE 1ST RESPONDENT.

ANNEX.R3(C) TRUE COPY OF THE 1ST PAGE OF THE PASS BOOK DATED 20/12/1999 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

ANNEX.R3(D) TRUE COPY OF THE HEIRSHIP CERTIFICATE ISSUED BY TAHSILDAR DATED 24/05/1985.

ANNEX.R3(E) TRUE COPY OF THE CERTIFICATE DATED 02/11/2007 ISSUED BY SECRETARY KADAVALLOR GRAMA PANCHAYAT ISSUED TO THE RESPONDENT NO.4.

ANNEX.R3(F) TRUE COPY OF THE CERTIFICATE DATED 2/11/07 ISSUED BY SECRETARY PATTAMBI GRAMA PANCHAYAT.

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C) No. 28476 of 2007-M

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Dated this the 7th day of December, 2007

J U D G M E N T

The petitioner, the fourth respondent and another stood as sureties for a loan availed by the third respondent, the wife of the fourth respondent, from the second respondent, a Co-operative Bank. Deductions were made from the salaries of the petitioner and the fourth respondent. The learned counsel for the second respondent submits that an amount of Rs.15,412/- has been recovered from the petitioner's salary and that, an amount of Rs.19,000/- has been recovered from the salary of the fourth respondent, who is none other than the husband of the principal debtor, the third respondent. It is also pointed out that though the second respondent has requested the employer of yet another surety, namely, Chandran, no recovery has been affected till now.

2. With the passage of time, the petitioner has retired from service. The commuted value of pension, D.C.R.G and other retiral benefits are withheld for the recoveries in question.

3. The power of recovery, as put forward by the second respondent, is on the basis of Ext.R2(a), an agreement which falls within the purview of Section 37 of the K.C.S Act. Though, the agreement is explicit in as much as it provides for recovery only from the salary, that too by monthly deductions, it does not authorise any recovery from any other amounts due to the petitioner. The second respondent's right to proceed under Section 37 of the K.C.S Act does not go beyond that agreement. For this short reason, the petitioner's contentions stand.

In the result, all further recoveries from the petitioner, under Section 37 of the Act, as against the commuted value of pension, D.C.R.G and other retiral benefits are quashed and it is declared that the petitioner shall not be liable for any such amounts or any such recoveries. It is clarified that this judgment does not adjudicate upon the petitioner's right to move against the third respondent for contribution. All other issues are left open. The writ petition is allowed as above.

THOTTATHIL B. RADHAKRISHNAN,
Judge

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